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Angelena A. Walker v. State Tax Commission of Utah : Abstract of Record

Utah Supreme Court

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Ingebretsen, Ray, Rawlins & Christensen; Attorneys for Appellant;
Garfield O. Anderson; Grant A. Brown; Attorneys for Respondent;

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In the

Supreme Court of the State of Utah

In the Matter of the Estate of ANGELENA
A. WALKER, Deceased,
Walker Bank & Trust Company, a corpo-
ration, executor of the last will of said
deceased,

Appellant,

vs.

THE STATE TAX COMMISSION OF
UTAH,

Respondent.

Case
No. 6299

ABSTRACT OF RECORD

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT OF THE
STATE OF UTAH, IN AND FOR SALT LAKE COUNTY.

HON. CLARENCE E. BAKER, *Presiding*

INGEBRETSEN, RAY, RAWLINS & CHRISTENSEN,
Attorneys for Appellant.

GARFIELD O. ANDERSON,
GRANT A. BROWN,
Attorneys for Respondent.

ARROW PRESS, SALT LAKE

SEP 1940

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Transcript

[TITLE OF COURT AND CAUSE]

1

PETITION

Comes now the State Tax Commission of the
State of Utah and informs and petitions this Honor-
able Court as follows:

I

That the State Tax Commission is a body politic, created by the Constitution and the Laws of the State of Utah, and is charged with the duty, among other things, of administering the provisions of Chapter 12, Title 80, Revised Statutes of Utah, 1933, otherwise known as the Inheritance Tax Law, and of collecting all inheritance taxes thereunder.

II

That Angelena A. Walker died testate on or about the 9th day of June, A. D. 1939; that by the terms of the decedent's last will and testament, the Walker Bank & Trust Company, a corporation, organized and existing under the laws of the State of Utah with its principal place of business at Salt Lake City, Utah, was named executor of the estate of said decedent; that said Walker Bank & Trust Company duly qualified and was appointed executor of said estate by the above-entitled Court and is now serving in such capacity; that on or about the 23rd day of December, A. D. 1939, said executor filed with this Court an Inheritance Tax Report and Appraisal, listing certain property therein which was duly appraised by the inheritance tax appraisers in and for Salt Lake County in the total sum of \$47,845.03.

III

That said decedent, during her lifetime, to wit, the 14th day of October, 1935, entered into a certain

Transcript

irrevocable trust indenture in the form and substance hereto attached as Exhibit "A," and by this reference made a part hereof; that by the terms of said trust indenture, the decedent transferred to the Walker Bank & Trust Company, as trustee, certain shares of stock, to wit, 1,573½ shares of capital
2 stock of the M. H. Walker Realty Company, and 1,237 shares of the capital stock of the Walker Bank & Trust Company; that said stock, so transferred in trust, was at the date of death of said trustor of a total value in excess of \$200,000.00; that by the terms of the said trust indenture, it was provided that all of the net income from the trust corpus was to be paid to the said decedent as trustor for the full term of her natural life; that upon the death of said trustor the trust corpus and any accumulated earnings were to be distributed for the benefit of certain named beneficiaries, but that the said named beneficiaries were to have no right to either the corpus of the trust or to the income therefrom during the lifetime of Angelena A. Walker, the said trustor; that in compliance with the provisions of said trust agreement, the net income derived from the said trust property was by the said trustee paid to said trustor during her lifetime; and subsequent to the death of the said trustor and in conformance with the provisions of the said trust agreement, the trust corpus was duly distributed for the benefit of the said named beneficiaries.

IV

That said transfer of the property, comprising the said trust corpus, to said trustee is a taxable transfer under the provisions of Chapter 12, Title 80, Revised Statutes of Utah, 1933, by reason of the reservation to the trustor of the sole right to all of the net income from the trust estate during her lifetime, and that such transfer was, and is, a transfer intended to take effect in possession or enjoyment at or after the death of the trustor, and, therefore, is subject to tax under the Inheritance Tax Laws of the State of Utah and particularly Section 80-12-3 thereof; that notwithstanding the premises, the said executor of the above-entitled estate, although at the time it filed said report and appraisal, said executor advised the State Tax Commission of said trust indenture and supplied said Commission with a copy thereof, has refused to include said trust property in the Inheritance Tax Report and Appraisal, claiming that the property in trust is not subject to tax under the Inheritance Tax Laws of the State of Utah.

V

That the transfer and disposition of property, effected by the said irrevocable trust indenture, which by incorporation is made a part of this petition, was, and is, a transfer and disposition of property subject to tax under Chapter 12, Title 80, Revised Statutes of Utah, 1933, as amended.

WHEREFORE, YOUR PETITIONER PRAYS:

I

That this Honorable Court enter its order adjudging the transfer of property to the Walker Bank & Trust Company under the terms of the trust indenture, heretofore referred to, to be a taxable transfer under the provisions of Chapter 12, Title 80, Revised Statutes of Utah, 1933.

II

That the executor of the above-entitled estate be ordered to file a supplemental inventory covering said trust property and have said trust property appraised for inheritance tax purposes.

III

For such other and further relief as this Honorable Court may deem just and meet in the premises.

GARFIELD O. ANDERSON,
Attorney for State Tax Commission.

(Duly verified)

5.

TRUST INDENTURE

THIS INDENTURE OF TRUST, made at Salt Lake City, Utah, this 11th day of October, 1935, by and between Angelena A. Walker, of Salt Lake City, Utah, Trustor, herein designated as Trustor, and Walker Bank and Trust Company, a banking corpo-

Transcript

ration with trust powers, of Salt Lake City, Utah, Trustee, herein designated as Trustee, WITNESSETH:

The Trustor hereby endorses, assigns, transfers, conveys and delivers to the Trustee the following property:

1573½ shares of capital stock of M. H. Walker Realty Company.

1237 shares of capital stock of Walker Bank and Trust Company.

TO HAVE AND TO HOLD unto said Trustee, its successors and assigns absolutely and irrevocably, but as a trust estate upon and subject to the following trusts, terms and conditions:

I. The Trustee is hereby invested with the same full management, control and disposition of said property that the Trustor had as the owner thereof, including specifically, without being limited to, the right to sell, exchange, pledge, encumber, lease or otherwise dispose of and deal with said property, the right to borrow upon, pledge or otherwise encumber the same or any part thereof, the right to acquire any other property in substitution or addition to the present items of said estate and generally all and every power, proper or incidental, to the management of said estate; provided, that I invest Glenn Walker Wallace or her nominee with exclusive power to vote any shares of stock, and to exercise all voting right attached to property, of the estate.

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II. The Trustee shall pay the net income derived from the trust estate to the Trustor for the full term of her natural life and may also pay to the Trustor such amounts in addition from the corpus, as, in the sole judgment of the Trustee may be reasonably required, especially in an emergency, for her proper support, maintenance and general welfare.

III. Upon the death of the Trustor, the corpus of the trust estate and all accumulated, accrued and accruing income shall be accounted for and disposed of by the Trustee as follows:

The Trustee shall divide and set apart the trust
6 estate into three *portions* or *shares* as follows:

(a) 250 shares of M. H. Walker Realty Company stock and 300 shares of Walker Bank and Trust Company stock, to be held and managed for Harry Hague, and his successors, as follows:

The Trustee shall pay the net income from said portion to Harry Hague for the full term of his natural life and upon his death, shall pay one-half of said net income to his surviving widow, Hazel Snarr Hague, for the full term of her natural life, and the remaining one-half of said income to his children, Barbara, Helen and Harry, Jr., share and share alike, until the death of their mother; upon the death of their mother, the corpus of said portion of the estate and any accumulated or accrued income thereon shall be distributed, share and share alike to said three children, or if any be dead, to his or her lawful issue and if none, to and among his or her surviving brothers and sisters.

Transcript

(b) 662 shares of M. H. Walker Realty Company stock and 468½ shares of Walker Bank and Trust Company stock, to be held and managed for Lena Hague and her successors as follows:

The Trustee shall pay the net income derived from said stock to said Lena Hague for the full term of her natural life, and upon her death, the Trustee shall thereafter pay the accumulated and accrued income and all net income thereafter derived from said portion to Glenn W. Wallace for the full term of her natural life and upon her death, the Trustee shall distribute the corpus of said *trust share* and any accumulated or accrued income therein to the children of Glenn W. Wallace, to wit: M. H. Walker Wallace, and John M. Wallace, Jr., share and share alike.

(c) 661½ shares of M. H. Walker Realty Company stock and 468½ shares of the capital stock of Walker Bank and Trust Company, to be held and managed for Glenn W. Wallace and her successors as follows:

The Trustee shall pay the net income therefrom to Glenn W. Wallace for the full term of her natural like, and upon her death, shall distribute and deliver the corpus of said trust share, with any accumulated and accrued income therein to and among her children above named, in equal shares.

IV. Any further issue of Glenn Wallace shall share equally with her present children and if any child die before he or she would be entitled to delivery hereunder, his or her share shall go to his or her

Transcript

issue, if any, and if none, to his or her surviving brothers and sisters.

V. This trust shall be and remain absolute and irrevocable without any reservation or reversion in favor of the Trustor, excepting only her right to the net income to the trust estate during the term of her natural life, as hereinabove specified.

VI. The Trustee shall possess full powers of control and management without the intervention of any court or judicial tribunal for any purpose and it may keep the funds of the trust estate in its commercial or savings department and may deal with its other departments with respect to investments and otherwise and may transact business with such other departments as freely as with another concern or
7 with a third person and without any added responsibility or liability and shall not be liable where its acts or omissions are based on ordinary care and good faith or for mere errors of judgment or discretion, but only in case of gross negligence or wilful neglect.

IN WITNESS WHEREOF, the Trustor has hereunto set her hand at Salt Lake City, Utah, the day and year first above written.

(Signed) ANGELENA A. WALKER

(Angelena A. Walker)

Signed in the presence of :

(Signed) JAMES INGEBRETSEN

(Signed) ATHOL RAWLINS

Transcript

8

The undersigned acknowledges the receipt of the property described in the foregoing indenture this 14th day of October, 1935, and agrees to hold and manage said property upon the terms and conditions hereabove set forth.

WALKER BANK & TRUST COMPANY

By REED E. HOLT,

[SEAL]

Ass't. Trust Officer

STATE OF UTAH
COUNTY OF SALT LAKE } ss.

On the 11th day of October, 1935, personally appeared before me, J. M. Christensen, a Notary Public in and for Salt Lake County, State of Utah, the above named Angelena A. Walker, with whom I am personally acquainted and personally known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that she executed the same as her free act and deed for the purposes therein mentioned.

WITNESS my hand and official seal at Salt Lake City, Utah, this 11th day of October, 1935.

J. M. CHRISTENSEN,

Notary Public for the state of Utah,
in and for Salt Lake City and County.

My Commission Expires :

October 8, 1938

Date 10/25/35

Transcript

We hereby guarantee that the foregoing is a true and correct copy of the original instrument duly executed, which is in our possession and under our control.

WALKER BANK & TRUST COMPANY

By REED E. HOLT,

Trust Officer.

Filed April 18, 1940.

[TITLE OF COURT AND CAUSE]

9 DEMURRER TO PETITION OF THE STATE TAX
COMMISSION OF UTAH

COMES NOW Walker Bank & Trust Company, a corporation, as executor of the last will of Angelena A. Walker, deceased, and demurs to the petition herein of the State Tax Commission of the State of Utah, in which petition it is prayed that the transfer of property therein described be held to be a taxable transfer under the provisions of Chapter 12, Title 80, Revised Statutes of Utah, 1933, and that said executor be ordered to file a supplemental inventory covering said property and that the same be appraised for inheritance tax purposes, upon the ground that said petition does not state facts sufficient to entitle said State Tax Commission to the relief therein prayed for, or to any other relief.

WHEREFORE, said executor prays that said petition be dismissed.

Transcript

INGEBRETSEN, RAY, RAWLINS & CHRISTENSEN,
Attorneys for Walker Bank & Trust Com-
pany, as executor of the last will of Ange-
lene A. Walker, Deceased.

Filed May 1, 1940.

- 10 Notice calling up demurrer filed June 5, 1940.
- 11 Demurrer argued and submitted June 11, 1940.
- 12 Entered order overruling demurrer July 9, 1940.
- 13 Notice of overruling of demurrer filed July 10,
1940.

[TITLE OF COURT AND CAUSE]

15 ELECTION TO STAND ON DEMURRER

COMES NOW Walker Bank & Trust Company, a corporation, as executor of the last will of Angelena A. Walker, Deceased, and hereby elects to stand upon its demurrer to the petition herein of the State Tax Commission of Utah, in which petition it is prayed that the transfer of property therein described be held to be a taxable transfer under the provisions of Chapter 12, Title 80, Revised Statutes of Utah, 1933, and that said executor be ordered to file a supplemental inventory covering said property, and that the same be appraised for inheritance tax purposes, and hereby refuses to answer or otherwise further plead to said petition, and hereby waives time within which to answer or otherwise further plead to said petition.

Transcript

INGEBRETSEN, RAY, RAWLINS & CHRISTENSEN,
Attorneys for Respondent, Walker Bank &
Trust Company, as executor of the last will
of Angelene A. Walker, Deceased.

Filed July 12, 1940.

[TITLE OF COURT AND CAUSE]

16

JUDGMENT

WHEREAS, the above-entitled Court on the 9th day of July, A. D., 1940 overruled the Demurrer of the Walker Bank & Trust Company as executor of the Last Will and Testament of Angelena A. Walker, which Demurrer was filed to the Petition of the State Tax Commision of the State of Utah praying that certain transfers of property be held taxable under Chapter 12, Title 80, Revised Statutes of Utah, 1933, and for other relief; and

WHEREAS, the above-named Walker Bank & Trust Company as executor of the Will of Angelena A. Walker, deceased, has, since notice of said ruling on this Demurrer, filed its Election to Stand on its Demurrer, wherein and whereby said executor refuses to answer or otherwise plead to the said Petition of the State Tax Commission, and further, waives time within which to answer or otherwise further plead to said Petition;

NOW, THEREFORE, upon motion of Garfield O. Anderson, Attorney for the State Tax Commission of the State of Utah,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, in accordance with the prayer of said Petition of the said Tax Commission, the transfer of property by Angelena A. Walker, now deceased, to the Walker Bank & Trust Company under the terms of a certain trust indenture dated October 11, 1935, a copy of which is attached to the Petition of the State Tax Commission, be and the same is hereby found to be a taxable transfer under the provisions of Chapter 12, Title 80, Revised Statutes of Utah, 1933; that the executor of the above-entitled estate be and it is hereby ordered to file a supplemental inventory, including therein said property so transferred by said trust indenture, and said executor
17 is further ordered to have said property so transferred by said trust indenture appraised for inheritance tax purposes.

Dated this 17th day of July, A. D. 1940.

CLARENCE E. BAKER,

Judge.

Filed July 17, 1940.

[TITLE OF COURT AND CAUSE]

18 NOTICE OF APPEAL

TO THE STATE TAX COMMISSION OF THE STATE OF UTAH AND TO MR. GARFIELD O. ANDERSON AND MR. GRANT A. BROWN, ITS ATTORNEYS:

YOU AND EACH OF YOU WILL PLEASE

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TAKE NOTICE that WALKER BANK & TRUST COMPANY, a corporation, as executor of the last will and testament of ANGELENA A. WALKER, Deceased, respondent herein, hereby appeals to the Supreme Court of the State of Utah from that certain Judgment entered in the above entitled court and cause on the 17th day of July, 1940, wherein and whereby the court ordered, adjudged and decreed that the transfer of property by said Angelena A. Walker, Deceased, to said Walker Bank & Trust Company under the terms of a certain trust indenture dated October 11, 1935, is a taxable transfer under the provisions of Chapter 12, Title 80, Revised Statutes of Utah, 1933, and that said respondent executor file a supplemental inventory of the property transferred by said trust indenture and have said property appraised for inheritance tax purposes.

Dated this 8th day of August, 1940.

INGEBRETSEN, RAY, RAWLINS & CHRISTENSEN,
Attorneys for Respondent, Walker Bank &
Trust Company, as executor of the last will
of Angelene A. Walker, Deceased.

Received a copy of the above and foregoing
Notice of Appeal this 9th day of August, 1940.

GARFIELD O. ANDERSON,
GRANT A. BROWN,
Attorneys for Petitioner,
State Tax Commission of the
State of Utah.

Filed August 12, 1940.

Transcript

[TITLE OF COURT AND CAUSE]

19 WAIVER OF UNDERTAKING ON APPEAL

COMES NOW THE STATE TAX COMMISSION OF THE STATE OF UTAH and hereby waives undertaking on the appeal of WALKER BANK & TRUST COMPANY, a corporation, as executor of the last will of ANGELENA A. WALKER, Deceased, from that certain Judgment made and entered in the above entitled court and cause on the 17th day of July, 1940.

Dated this 9th day of August, 1940.

GARFIELD O. ANDERSON,
GRANT A. BROWN,
Attorneys for Petitioner,
State Tax Commission of the
State of Utah.

Filed August 12, 1940.

[TITLE OF COURT AND CAUSE]

20 CLERK'S CERTIFICATE

I, WILLIAM J. KORTH, Clerk of the above entitled Court, do hereby certify that the above and foregoing and hereto attached files contain all the original papers designated by the praecipe filed herein by attorney for appellant in the above entitled case, including the original Notice of Appeal, together with full, true and correct copies of entered orders made by the court and designated by the said

praecipe. The whole constituting the Transcript on Appeal therein.

I further certify that a Waiver of Undertaking on Appeal has been properly filed, and that the same was filed on the 12th day of August, A. D. 1940.

And I further certify that said Transcript is this date transmitted to the Supreme Court of the State of Utah, pursuant to such appeal.

WITNESS my hand and the Seal of said court at Salt Lake City, Utah, this 21st day of August, A. D. 1940.

WILLIAM J. KORTH,
Clerk Third District Court.

By (signed) ALVIN KEDDINGTON,
[SEAL] *Deputy Clerk.*

[TITLE OF COURT AND CAUSE]

ASSIGNMENTS OF ERROR

COMES NOW Walker Bank & Trust Company, a corporation, as executor of the last will of Angelena A. Walker, deceased, and respectfully assigns the following errors, appearing upon the record in the above entitled procedure upon which it will and does rely for a reversal of that judgment herein made and entered by the trial court on July 17, 1940, wherein and whereby the court ordered, adjudged and decreed that the transfer of property by said Angelena A. Walker, deceased, to said Walker Bank

Transcript

& Trust Company under the terms of a certain trust indenture dated October 11, 1935, is a taxable transfer under the provisions of Chapter 12, Title 80, Revised Statutes of Utah 1933, and that said executor file a supplemental inventory of the property transferred by said trust indenture and have said property appraised for inheritance tax purposes and from which this appeal is taken:

I

That the trial court erred in overruling appellant's demurrer to the petition of The State Tax Commission of Utah praying that such transfer of property be declared so taxable and that such supplemental inventory be filed and such property appraised for inheritance tax purposes.

II

That the trial court erred in making and rendering its said judgment dated the 17th day of July, 1940, to the effect that said transfer of property under the terms of said trust indenture is a taxable transfer under the provisions of Chapter 12, Title 80, Revised Statutes of Utah 1933, and that said executor file a supplemental inventory of the property transferred by said trust indenture and have said property appraised for inheritance tax purposes.

III

That said judgment dated the 17th day of July, 1940, is contrary to law.

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Dated this 22nd day of August, 1940.

INGEBRETSEN, RAY, RAWLINS & CHRISTENSEN,
Attorneys for Appellant.

Received copy of the above and foregoing assignments of error this 22nd day of August, 1940.

GARFIELD O. ANDERSON,
GRANT A. BROWN,
Attorneys for Respondent.

Filed August 22, 1940.